

AMENDED IN SENATE MAY 6, 2009  
AMENDED IN SENATE APRIL 20, 2009

**SENATE BILL**

**No. 173**

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**Introduced by Senator Florez**

February 14, 2009

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An act to add Sections 110153 and 111836 to, and to add Article 6.7 (commencing with Section 110808) to Chapter 5 of Part 5 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 173, as amended, Florez. Food safety: testing and recalls.

Existing law, the Sherman Food, Drug, and Cosmetic Law, authorizes, for purposes of enforcement of the law, an authorized agent of the State Department of Public Health to, among other things, enter any factory, warehouse, or establishment in which any food is manufactured, packed, or held, enter any vehicle that is being used to transport or hold the food, and inspect any factory, warehouse, establishment, vehicle, or place, and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. Existing law authorizes the agent to secure any sample or specimen of any food, as specified. It is unlawful for any person to refuse to permit entry or inspection, the taking of samples or other evidence, or access to copying of any record as authorized by this part, or to conceal the samples or evidence, or withhold evidence concerning them. A violation of the law is a misdemeanor.

This bill would require every food grower, ~~food processor, and food facility or food processor~~ that subjects food that it grows, ~~processes, or prepares for sale or processes~~ to testing to determine the presence of a

microbe, pathogen, poisonous chemical, or other harmful substance that may cause food-borne disease to maintain accurate records with the results of these tests, as specified, and report to the department test results that indicate the presence of a microbe, pathogen, poisonous chemical, or other harmful substance that may cause food-borne disease.

This bill would require the State Public Health Officer to recall food to prevent, circumscribe, or eliminate any condition if the food may carry an illness, infection, pathogen, contagion, toxin, or condition that, without intervention, could transmit an illness that could kill or seriously affect the health of humans, as specified.

This bill would require every food grower, ~~food processor, or food facility that grows, processes, or prepares for sale~~ *or food processor that grows or processes* food that causes the outbreak of a food-borne disease and is subject to a mandatory recall by the department to be subject to specified requirements, except under certain circumstances.

By creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 110153 is added to the Health and Safety
- 2 Code, to read:
- 3 110153. (a) Every food ~~grower, food processor, and food~~
- 4 ~~facility~~ *grower or food processor* that subjects food that it ~~grows,~~
- 5 ~~processes, or prepares for sale~~ *grows or processes* to testing to
- 6 determine the presence of a microbe, pathogen, poisonous
- 7 chemical, or other harmful substance that may cause food-borne
- 8 disease shall maintain accurate records with the results of these
- 9 tests for at least two years after receipt of the test results. These
- 10 records shall be subject to inspection pursuant to this part.
- 11 (b) Every food ~~grower, food processor, and food facility~~ *grower*
- 12 *or food processor* described in subdivision (a) that receives test
- 13 results that indicate the presence of a microbe, pathogen, poisonous

1 chemical, or other harmful substance that may cause food-borne  
2 disease shall report these test results to the department within one  
3 hour of receipt in accordance with department regulations regarding  
4 the method of reporting.

5 SEC. 2. Article 6.7 (commencing with Section 110808) is  
6 added to Chapter 5 of Part 5 of Division 104 of the Health and  
7 Safety Code, to read:

8  
9 Article 6.7. Food Recalls

10  
11 110808. Subject to the rights and procedures established  
12 pursuant to Chapter 4.5 (commencing with Section 11400) of  
13 Division 3 of Title 2 of the Government Code, and in accordance  
14 with regulations adopted pursuant to this code, the State Public  
15 Health Officer shall recall food if he or she believes, upon any  
16 basis reasonably supportable by standard epidemiological practice  
17 or credible scientific research, that the food may carry an illness,  
18 infection, pathogen, contagion, toxin, or condition that, without  
19 intervention, could transmit an illness that could kill or seriously  
20 affect the health of humans, including, in addition to the original  
21 condition, those clinically plausible secondary illnesses, infections,  
22 pathogens, contagions, toxins, or conditions arising from the effects  
23 of the original.

24 SEC. 3. Section 111836 is added to the Health and Safety Code,  
25 to read:

26 111836. (a) Except as provided in subdivision (b), every food  
27 ~~grower, food processor, or food facility that grows, processes, or~~  
28 ~~prepares for sale~~ *grower or processor that grows or processes*  
29 food that causes the outbreak of a food-borne disease and is subject  
30 to a mandatory recall by the department shall be subject to all of  
31 the following:

32 (1) If the food ~~grower, food processor, or food facility~~ *grower*  
33 *or food processor* is determined to be liable for damages arising  
34 from a cause of action brought by a person harmed by the food,  
35 the food ~~grower, food processor, or food facility~~ *grower or food*  
36 *processor* shall also be liable to the plaintiff for treble damages.

37 (2) Onsite inspections by an authorized agent of the department  
38 at a frequency determined by the department to prevent any  
39 additional outbreaks of a food-borne disease, but not less than  
40 eight days per month for a period of at least 12 months. The food

1 ~~grower, food processor, or food facility~~ *grower or food processor*  
2 shall be liable for the costs of these inspections.

3 (3) A suspension of operations for an amount of time determined  
4 by the department to prevent any additional outbreaks of a  
5 food-borne disease, but not to exceed six months.

6 (b) Every food ~~grower, food processor, or food facility~~ *grower*  
7 *or food processor* that ~~grows, processes, or prepares for sale food~~  
8 ~~that causes the~~ *grows or processes food that causes the* outbreak

9 of a food-borne disease and is subject to a mandatory recall by the  
10 department shall be exempt from the requirements of subdivision

11 (a) if the food ~~grower, food processor, or food facility~~ *grower or*  
12 *food processor* does both of the following:

13 (1) Has a written Hazard Analysis and Critical Control Point  
14 Plan that delineates the formal procedures for following the Hazard  
15 Analysis and Critical Control Point principles developed by the  
16 National Advisory Committee on Microbiological Criteria for  
17 Foods, *or a written Good Agriculture Practices program in place*  
18 *of a Hazard Analysis and Critical Control Point Plan, where*  
19 *determined to be appropriate.*

20 (2) Routinely subjects food that it ~~grows, processes, or prepares~~  
21 ~~for sale~~ *grows or processes* to testing to determine the presence  
22 of a microbe, pathogen, poisonous chemical, or other harmful  
23 substance that may cause food-borne disease in accordance with  
24 good standards and practices of the industry.

25 (c) Nothing in this part shall be construed to require a food  
26 ~~grower, food processor, or food facility~~ *grower or food processor*  
27 to meet the requirements of paragraph (1) or (2) of subdivision  
28 (b).

29 SEC. 4. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.